

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of BARBARA M. MORTON and DEPARTMENT OF HEALTH & HUMAN
SERVICES, O.C.A. INDIAN HEALTH SERVICES
Muskogee, Okla.

*Docket No. 95-2836; Submitted on the Record;
Issued March 11, 1998*

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant has met her burden of proof in establishing a recurrence of disability after December 3, 1993 causally related to her accepted May 6, 1993 employment injury of left arm contusion and left shoulder sprain.

On May 6, 1993 appellant, then a 44-year-old secretary, filed a claim, alleging that she injured her left arm and shoulder after slipping on water while using crutches due to a prior foot injury. The Office of Workers' Compensation Programs accepted her claim for left arm contusion and shoulder sprain. On February 25, 1994 appellant filed a claim for recurrence of disability, alleging that she sustained a recurrence of disability between June 9 and 17, 1993 and stopped work due to disability on December 3, 1993. Appellant asserted that she had never recovered from her original injury and her condition was not a recurrence but a continuation of her original injury. By decision dated March 31, 1994, the Office denied appellant's claim on the grounds that the evidence did not establish a causal relationship between her accepted injury and her claimed condition. In a merit decision dated October 7, 1994, an Office hearing representative affirmed the Office's March 31, 1994 decision. In merit decisions dated November 4 and December 7, 1994, the Office denied appellant's requests for reconsideration on the grounds that the evidence submitted was insufficient to establish modification. In a decision dated May 9, 1995, the Office denied merit review of appellant's claim on the grounds that the evidence submitted on reconsideration was repetitious and was insufficient to establish that review was warranted. In a merit decision dated July 18, 1995, the Office reaffirmed its denial of appellant's claim.

The Board finds that this case is not in posture for decision.

Where appellant claims recurrence of disability due to an accepted employment-related injury, she has the burden of establishing by the weight of the substantial, reliable, and probative evidence that the subsequent disability for which she claims compensation is causally related to

the accepted injury.¹ This burden included the necessity of furnishing evidence from a qualified physician who, on the basis of a complete and accurate factual and medical history, concluded that the condition is causally related to the employment injury and supports that conclusion with sound medical reasoning.²

In the present case, there are two medical reports which relate appellant's claimed condition of dystonia to her accepted employment injuries of left shoulder strain and left arm contusion. Dr. Randall Webb, a Board-certified neurologist and appellant's treating physician, has provided inconsistent opinions concerning the cause of appellant's dystonia. In his March 22, 1994 form report, he diagnosed dystonia and checked the appropriate box to indicate that it was related to the May 6, 1993 employment incident. However, in contemporaneous medical reports dated February 23 and March 22, 1994, Dr. Webb indicated that the dystonia was "most likely" psychogenic in nature. The form reports in which Dr. Webb checked a box to indicate that the claimed condition was related to the provided history of injury are insufficient to sustain appellant's burden of proof as these reports are not rationalized. Dr. Webb did not provide any explanation or rationale for his opinion that the diagnosed medical condition was causally related to the May 6, 1993 incident. Therefore, these reports are insufficient to meet appellant's burden of proof.³ This is especially true in view of his contrary opinion in narrative reports that appellant's claimed condition was psychogenic in nature rather than related to her accepted employment injuries.⁴

A review of the record reveals that in a report dated May 10, 1994, Dr. Ashok Kache, a Board-certified psychiatrist and Office referral physician stated that appellant's dystonia was directly related to her May 6, 1993 injury and that she had a disability medically connected to her left arm contusion although he did not explain how that disability was medically related. He also diagnosed a brachioplexus trauma of unspecified nature and post-traumatic dystonia which implies that the post-traumatic dystonia could be related to the brachioplexus trauma which is not an accepted employment injury. The Office found that the report by Dr. Kache was inconclusive with respect to the cause of appellant's claimed condition.

While the report by Dr. Kache is not sufficient to establish that appellant's dystonia is causally related to her accepted employment injuries of left shoulder strain and left arm

¹ *John E. Blount*, 30 ECAB 1374 (1979).

² *Frances B. Evans*, 32 ECAB 60 (1980).

³ *Debra S. King*, 44 ECAB 203 (1992); *Salvatore Dante Roscello*, 31 ECAB 247 (1979).

⁴ Dr. Richard Dubinsky, a Board-certified neurologist, also opined that appellant's condition was due to psychological or emotional origins. Dr. Edith DeJesus, appellant's treating physician and internist since October 22, 1993, diagnosed reflex sympathetic dystonia versus psychogenic dystonia versus brachial plexus compression. She did not reach a definitive conclusion as to the proper diagnosis for appellant's condition or the cause of said condition. Similarly, Dr. Fred M. Ruefer, a Board-certified orthopedic surgeon, did not provide a definitive conclusion regarding the cause of appellant's condition. Dr. William Lutton, an internist, indicated that appellant had some characteristics of reflex sympathetic dystrophy syndrome but was "confounded" by the physical findings which were inconsistent with this diagnosis. Dr. David Wong, a Board-certified orthopedic surgeon, diagnosed spastic dystonia and concluded that barring any other objective correlation, her condition was related to the indicated employment incident although this was somewhat doubtful.

contusion, the Board finds that this report is sufficient to require further development of the evidence. The Office may undertake to develop either factual or medical evidence for determination of the claim.⁵ It is well established that proceedings under the Federal Employees' Compensation Act are not adversarial in nature,⁶ and while the claimant has the burden to establish entitlement to compensation, the Office shares the responsibility in the development of the evidence.⁷ The Office has the obligation to see that justice is done.⁸

In the present case, the Office undertook the development of the medical evidence by referring appellant to Dr. Kache for a second opinion medical examination. As the physician generally supported a causal relationship in his medical report, the Office should have requested further information from this physician when he did not provide sufficient explanation as to the cause of appellant's claimed condition of dystonia. On remand, the Office should further develop the evidence by providing Dr. Kache with a statement of accepted facts and requesting that he submit a supplemental medical opinion on whether appellant's dystonia condition is causally related to her accepted employment injuries. After such development as the Office deems necessary, a *de novo* decision shall be issued.⁹

⁵ 20 C.F.R. § 10.11(b); *see also John J. Carlone*, 41 ECAB 354 (1989).

⁶ *See, e.g., Walter A. Fundinger, Jr.*, 37 ECAB 200 (1985); *Michael Gallo*, 29 ECAB 159 (1978).

⁷ *Dorothy L. Sidwell*, 36 ECAB 699 (1985).

⁸ *William J. Cantrell*, 34 ECAB 1233 (1983).

⁹ Inasmuch as this case being remanded for further evidentiary development and the issuance of a *de novo* decision on the merits of appellant's claim for recurrence of disability, any issue in relation to the Office's denial of a merit review in her case is deemed moot.

The decisions of the Office of Workers' Compensation Programs dated July 18 and May 9, 1995 and December 7, November 4 and October 7, 1994 are set aside and the case is remanded for further proceedings consistent with this decision.

Dated, Washington, D.C.
March 11, 1998

David S. Gerson
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member